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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140417346-4575-02]

RIN 0648-XD252

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; Closure of directed fishing for Pacific sardine notification.

SUMMARY: NMFS issues this final rule to implement the annual catch limit (ACL), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2014, through June 30, 2015. The 2014-2015 ACL for Pacific sardine is 23,293 metric tons (mt). The initial overall commercial fishing target that is to be allocated across the three allocation periods for sardine management is 19,293 mt. This amount will be divided across the three seasonal allocation periods for the directed fishery the following way: July 1-September 14—7,718 mt; September 15-December 31—4,823 mt; and January 1-June 30—6,752 mt, with an incidental set-aside of 500 mt for each of the three periods. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast. This rule also announces that the directed fishing

harvest total for the first allocation period (July 1-September 14) has been reached and therefore directed fishing for Pacific sardine is now closed until September 15, 2014.

DATES: Effective [insert date of filing for public inspection by the FEDERAL REGISTER] through June 30, 2015, except for the directed harvest closure that is effective through September 14, 2014.

ADDRESSES: West Coast Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034. SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific sardine is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), and harvest guideline (HG), along with recommendations and comments from the Team, Subpanel, and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

The purpose of this final rule is to implement the ACL and other annual catch reference points for 2014-2015, including the OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the

annual specification framework in the FMP. According to the FMP, the ACL must be equal to or less than the ABC, and the annual catch target (ACT) is then set equal to either the FMP-specified HG formula ($HG = [(Biomass-CUTOFF) * FRACTION * DISTRIBUTION]$) or the ACL, whichever value is less. For the 2014-2015 fishing season, the result of the HG formula was 28,646 mt; the ACT is therefore set equal to the ACL at 23,293 mt because it is less than the HG calculation. For the 2014-2015 fishing season, the Council chose to calculate the ACL using the HG formula, but applied a different temperature index for determining the Fraction parameter than is currently prescribed in the FMP for computing the HG. The rationale for this application is that this new temperature index is a better predictor of Pacific sardine recruitment and productivity.

The HG formula in the CPS FMP is $HG = [(Biomass-CUTOFF) * FRACTION * DISTRIBUTION]$ with the parameters described as follows:

1. Biomass. The estimated stock biomass of Pacific sardine age one and above for the 2014/2015 management season is 369,506 mt.
2. CUTOFF. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.
3. DISTRIBUTION. The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent.
4. FRACTION. The harvest Fraction is the percentage of the biomass above 150,000 mt that may be harvested. The Fraction varies as a result of current ocean temperatures measured at Scripps Pier, California.

Because the annual biomass estimates are an explicit part of the various harvest control rules for Pacific sardine, including the HG formula described above, as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend.

At the April 2014 Council meeting, the Council adopted the “Assessment of the Pacific Sardine Resource in 2014 for U.S.A. Management in 2014-2015” completed by NMFS Southwest Fisheries Science Center and the resulting Pacific sardine biomass estimate of 369,506 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is implementing an OFL of 39,210 mt, ABC of 35,792 mt, an ACL of 23,293 mt, and an ACT of 23,293 mt (equal to the ACL) for the 2014-2015 Pacific sardine fishing year. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

The Council also recommended, and NMFS is implementing, that the 23,293 mt ACT be reduced by 4,000 mt to account for potential harvest by the Quinault Indian Nation resulting in a final amount of 19,293 mt as the primary directed commercial fishing level to be allocated across the three seasonal allocation periods of July 1-September 14; September 15-December 31; and January 1-June 30. The Council also recommended and NMFS is implementing that incidental catch set asides be put in place for each allocation. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries. These incidental set asides are allocated as shown in the

following table, which also shows the adjusted directed harvest levels for each period in metric tons:

	July 1- September 14	September 15 – December 31	January 1- June 30	Total
Total Seasonal Allocation	7,718 (40%)	4,823 (25%)	6,752 (35%)	19,293
Incidental Set Aside	500	500	500	1,500
Adjusted Directed Harvest Allocation	7,218	4,323	6,252	17,793

Additional inseason accountability measures (AM) are in place to ensure the fishery stays within the ACL. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing will be closed to directed harvest and only incidental harvest will be allowed. For the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set-aside. As an additional AM, the incidental fishery will also be constrained to a 45 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine and reduce potential discard of sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will automatically be adjusted upward or downward accordingly to account for the excess or deficit. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total will be adjusted to account for the excess or deficit, as well.

If the total ACL or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery will be closed until it re-opens

either per the allocation scheme or at the beginning of the next fishing season. The NMFS West Coast Regional Administrator will publish a notification in the Federal Register announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure, NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

As explained in the proposed rule (79 FR 31074), 4,000 mt of the harvest level is being set aside for use by the Quinault Indian Nation. NMFS will consult with Quinault Department of Fisheries staff and Quinault Fisheries Policy representatives prior to the end of the allocation period to determine whether any part of this set-aside is available for transfer into the non-tribal directed fishery.

In addition to implementing final specifications for Pacific sardine, this rule also announces the closure of the fishery as described above. While the closure of the Pacific sardine fishery usually occurs in a separate public notice, based on the best available information recently obtained from the fishery, the directed fishing harvest total for the first allocation period (July 1 –September 15) has been reached. Fishing vessels must be at shore and in the process of offloading at the time of closure.

On May 30, 2014, a proposed rule was published for this action and public comments solicited (79 FR 31074). No comments were received. For further background information on this action please refer to the preamble of the proposed rule.

Detailed information on the fishery and the stock assessment are found in the report “Assessment of the Pacific Sardine Resource in 2014 for U.S.A. Management in 2014-2015” (see ADDRESSES).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

NMFS finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment for the closure of directed fishing for the remainder of the July 1-September 14 allocation period because it is impracticable and contrary to the public interest. This rule establishes seasonal harvest allocations and the ability to restrict fishing when these allocations are approached or reached. These allocations are important mechanisms in preventing overfishing and managing the fishery at optimum yield while allowing fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery. Allowing for prior notice and public comment on the closure of the first seasonal allocation period of July 1-September implemented by this rule is contrary to the public interest because it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific sardine. Based on data through July 14, 2014, NMFS believes that the directed harvest allocation for this period will be attained shortly, and a delay in the implementation of the closure of the fishery may cause the fishery to exceed the first seasonal allocation. Based on current and expected harvest rates allowing for public notice and comment is impracticable

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for both the establishment of these final harvest specifications for the 2014-2015 Pacific sardine fishing season and for the closure of the fishery. For the reasons set forth below, the immediate effectiveness of these final specifications and the closure of the fishery is necessary for the conservation and management of the Pacific sardine resource. A delay in the effectiveness of this rule would cause the fishery to exceed the seasonal allocation. Additionally, based on current data, NMFS believes that the directed harvest allocation for the period July 1 through September 14 will be attained shortly and a delay in the effectiveness of the closure of the fishery may cause the fishery to exceed the first seasonal allocation.

The seasonal allocation framework established in the FMP is an important mechanism to prevent overfishing, and is designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery. Delaying the effective date of this rule and closing the fishery is therefore impracticable, because any delay would decrease the Pacific sardine stock. Delay is also contrary to the public interest, because additional reduction of Pacific sardine beyond the incidental take limit set out in this action would decrease the future stock of the species, as well as harvest limits, thereby reducing future potential catch of the stock along with the profits associated with those harvests.

To help keep the regulated community informed of this final rule NMFS will also announce this action through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies. Additionally, NMFS will advise the CPS Advisory Subpanel, which is comprised of representatives from all

sectors and regions of the sardine industry, including processors, fishermen, user groups, conservation groups and fishermen association representatives, of current landings as they become available and for the public at-large also post them on NMFS' West Coast Region website, <http://www.westcoast.fisheries.noaa.gov>

These final specifications are exempt from review under Executive Order 12866.

No issues were raised by public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) prepared pursuant to the Regulatory Flexibility Act (RFA) for this action or on the economic impacts of the rule generally. Therefore, the Final Regulatory Flexibility Analysis (FRFA) contains no changes from the IRFA. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. The results of the FRFA are stated below. For copies of the FRFA, please see the ADDRESSES section above.

The purpose of this action is to implement the 2014-2015 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast including an ACT which is the primary commercial fishing target. If the total ACT or any of the seasonal apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will close until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the ACL and seasonal allocations are available until fully utilized by the entire CPS fleet.

On June 20, 2013, the U.S. Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22,

2013 (78 FR 37398). The rule increased the size standard for finfish fishing from \$4.0 million to \$19.0 million, shellfish fishing from \$4.0 million to \$5.0 million, and other marine fishing from \$4.0 million to \$7.0 million. NMFS conducted its analysis for this action using the new size standards.

As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below \$19 million. Under the former, lower standards, all entities subject to this action in previous years were considered small entities, and under the new standards they continue to be considered small. The small entities that would be affected by the action are the vessels that compose the West Coast CPS small purse seine fleet. In 2013, there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 58 vessels in the Federal CPS limited entry fishery off California (south of 39° N. lat.), and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2013 for the West Coast CPS finfish fleet was well below \$19 million; therefore, all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this action has an equal effect on all of these small entities and therefore will impact a substantial number of these small entities in the same manner. Therefore, this final rule will not create disproportionate costs between small and large vessels/businesses.

The profitability of these vessels as a result of this action is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel

price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2013 fishing year, approximately 64,000 mt were available for harvest by the directed fishery. Approximately 63,000 mt (approximately 7,100 mt in California and 56,000 mt in Oregon and Washington) of this allocation was harvested during the 2013 fishing season, for an estimated ex-vessel value of \$14 million. Using these figures, the average 2013 ex-vessel price per mt of Pacific sardines was approximately \$229 during that time period.

The initial non-tribal commercial fishing quota for the 2014-2015 Pacific sardine fishing season (July 1, 2014 through June 30, 2015) is 19,293 metric tons (mt). This is approximately 38,000 mt less than the equivalent allocation for 2013 and approximately 27,000 mt lower than the previous lowest level set in 2011. If the fleet were to take the entire 2014-2015 quota, and assuming a coastwide average ex-vessel price per mt of \$218 (average of 2012 and 2013 ex-vessel), the potential revenue to the fleet would be approximately \$3.87 million. Therefore the action will decrease small entities' potential profitability compared to last season, due to the lower quota this fishing season. The release of any unused portion of the 4,000 mt set-aside for the Quinault Indian Nation should they decide to do so might be used to supplement the amount available to the directed fishery as occurred in 2012 and 2013, thereby increasing the potential revenue to the fleet. Additionally, revenue derived from harvesting Pacific sardine is typically only one factor determining the overall revenue for a majority of the vessels that harvest Pacific sardine; as a result, the economic impact to the fleet from the action cannot be viewed in isolation. From year to year, depending on market conditions and availability

of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular squid, making Pacific sardine only one component of a multi-species CPS fishery. For example, market squid have been readily available to the fishery in California over the last three years with total annual ex-vessel revenue averaging approximately \$66 million over that time, compared to an annual average ex-vessel from sardine of \$16 million over that same time period. Additionally, many sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available.

These vessels typically rely on multiple species for profitability because abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore, as abundance levels and markets fluctuate, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues. Therefore, although there will be a potential reduction in sardine revenue for the small entities affected by this action as compared to the previous season, it is difficult to predict exactly how this reduction will impact overall annual revenue for the fleet.

No significant alternatives to this action exist that would accomplish the stated objectives of the applicable statutes and which would minimize any significant economic impact of this action on the affected small entities. The CPS FMP and its implementing regulations require NMFS to calculate annual harvest levels by applying the harvest

control rule formulas to the current stock biomass estimate. Therefore, if the estimated biomass decreases or increases from one year to the next, so do the applicable quotas. Determining the annual harvest levels merely implements the established procedures of the FMP with the goal of continuing to provide expected net benefits to the nation, regardless of what the specific annual allowable harvest of Pacific sardine is determined to be.

There are no reporting, record-keeping, or other compliance requirements required by this final rule. Additionally, no other Federal rules duplicate, overlap or conflict with this final rule.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 15, 2014

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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